IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 3 OF 2006.
IN
SECOND APPEAL NO. 623 OF 1987.

Appasaheb Raosaheb Desai & others. ... Applicants.
Versus.
Shamkant Appasaheb Desai & others. ... Respondents.

Shri S.M.Oak with Shri Ambar Joshi for the Applicants.

Shri R.S.Patil for the Respondents Nos.1 to 4.

Shri D.S.Nimbalkar for the REspondents Nos.5 and 7.

Shri G.N.Salunkhe for the Respondents Nos.8 to 10.

Shri Sarang Ardhye i/by M/s.YSK Legal for Respondents Nos.11 to 13.

Shri Rajiv Wagh i/by Shri Sukesha Bhandari for the Respondent No.14.

CORAM : ABHAY S.OKA, J.

DATED : 24th MARCH, 2006.

P.C.:

1. Heard the learned Advocate for the Applicants. The only ground for review of the consent decree which is pressed into service is stated in paragraph 9 of the application, which reads as under:

> "The Applicants state that the Respondent No.10 has misrepresented the Applicants Nos.1, 2, 4, 5, 6 and 10 and got their signature on the Consent Terms. The Applicants state that the Respondent No.10

> has committed forgery by putting thumb impression against the names of Respondents Nos.8 and 9. Similarly, the signatures of Appellant No.3 and 7 are also forged by the Respondent No.10 at the instance of Respondents nos.1 to 4 and Respondents Nos.8 and 9 herein."

2. The learned Advocate for the Applicant submitted that in view of the above position, the order passing decree in terms of the consent terms will have to be reviewed. The Respondent No.10 has filed affidavit and has denied the said allegations.

3. I have carefully considered the submissions of the Applicant. In paragraph 2 of the order dated 4th March 2005, this Court has stated as under:

> "2. The learned Counsel appearing for the parties have tendered consent terms. The said consent terms are signed by the Advocates appearing for the parties. The learned Counsel appearing for the parties state that the consent terms are duly signed by all the parties to the appeal. It is also stated that none of the parties is a minor. The consent terms are taken on

record and marked "X" for identification".

This Court has recorded solemn statements of the Advocates appearing for the present Applicants and the Advocate appearing for the other parties that the consent terms were signed by the respective parties. Consent decree was passed only after accepting the aforesaid statements made by the Advocates appearing for the parties. When responsible Advocates make such statements it is to be assumed that they have verified that their respective clients have voluntarily signed the consent terms. Moreover no material particulars are pleaded regarding misrepresentation allegedly practiced by the Respondent No.10. Hence the consent decree which is passed on the basis of the consent terms duly signed by the Applicants Nos.1, 2, 4, 5, 6 and 10 cannot be set aside in the Review Application on the ground of misrepresentation.

4. The other ground is that the Respondent No.10 has committed forgery by putting the thumb impressions against the names of Respondents nos.8 and 9. This allegation is also denied by the Respondent No.10 in his affidavit-in-reply. This allegation cannot be considered because the Respondents Nos.8 and 9 have not applied for review or for setting aside the decree on the allegation that their thumb impressions do not

appear on the consent terms. The said allegation at the instance of the Applicants cannot be accepted for two reasons. Firstly, there is a denial of the said allegation by the concerned Respondent. Secondly, if the said allegation is accepted, the solemn statement made by the Advocates appearing for the said parties will have to be disbelieved. The Respondent No.10 has stated on oath that he has not forged the signatures of the Appellant Nos.3 and 7. As stated earlier, the Advocates representing the parties have stated that the consent terms are signed by the respective parties. If the said statements are to be disbelieved, the concerned Advocates ought to have been impleaded as parties. In the absence of the Advocates, if such statements made by the parties are accepted, it will put the concerned Advocates in a very awkward position.

5. After the Advocates have made solemn statement before this Court that the signatures appearing in the consent terms are of their respective clients, it is very unhealthy practice for the litigants to came to this Court and dispute their signature or say that their signatures are obtained by misrepresentation by somebody. The Respondent No.10 has gone to the extent of alleging that his Advocate did not read over the consent terms to him before obtaining his signature. If such allegations are to be tested, the Advocates are

necessary and proper parties to the petition. I am not persuaded to disbelieve the correctness of the statements made by the concerned Advocates that all the parties have duly signed the consent terms. It must be noted here that the record of the Second Appeal shows that the settlement was not overnight. On 12th January 2005 and on 18th February 2005 this Court specifically granted time to the parties for arriving at settlement.

6. There is no ground for review. The Application is dismissed. Interim stay stands vacated.

Judge.